

UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

In the Matter of the Search of:

information associated with the following Facebook URL
https://www.facebook.com/lilxhayes and Facebook User
ID 100000494492986, and more fully described in
Attachment A

Case No. 19-979M(NT)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

See Attachment A

located in the Eastern District of Wisconsin, there is now concealed:

See Attachment B

The basis for the search under Fed. R. Crim P. 41(c) is:

- ☐ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☒ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of:

Title 18, United States Code, Section 1073

The application is based on these facts: See attached affidavit.

- ☐ Delayed notice of ____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

Jeremy Loesch, Supervisory Deputy
Printed Name and Title

Sworn to before me and signed in my presence:

Date: November 25, 2019


Judge's signature

City and State: Milwaukee, Wisconsin

Nancy Joseph, U.S. Magistrate Judge
Printed Name and Title

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT

I, Jeremy Loesch, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook user ID that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered at 1601 Willow Road Menlo Park, California 94025. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user ID.

2. I am currently employed as a Supervisory Deputy for the U.S. Marshals Service. I have been employed as a law enforcement officer for 16 years. As a part of my duties, I investigate violations of federal and state laws, including those relating to fugitives.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other deputies, police officers, agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that a violation of Title 18 United States Code § 1073 has been committed by Demarcus Hayes (Hayes). There is also probable cause to search the information described in Attachment A for evidence of these crimes as described in Attachment B.

PROBABLE CAUSE

5. On May 13, 2019, a criminal complaint was issued in Milwaukee County Circuit Court, case number 2019CF002053, charging Hayes with (1) one count of 1st Degree Recklessly Endangering Safety, contrary to Wis. Stat. § 941.30(1), with a modifier of Use of a Dangerous Weapon, in violation of Wis. Stat. § 939.63(1)(b), and (2) one count of 2nd Degree Recklessly Endangering Safety, contrary to Wis. Stat. § 941.30(2), with a modifier of Use of a Dangerous Weapon, in violation of Wis. Stat. § 939.63(1)(b). An arrest warrant (warrant number K00390) and authorization for nationwide extradition were issued the same day. A copy of the criminal complaint and the associated arrest warrant are attached to this affidavit as Exhibit A. The charge of 1st Degree Recklessly Endangering Safety is a class F felony punishable by a term of imprisonment not to exceed 12 years and 6 months. The charge of 2nd Degree Recklessly Endangering Safety is a class G felony punishable by a term of imprisonment not to exceed 10 years. The modifier charge of Use of a Dangerous Weapon may increase the term of imprisonment for each of the charges not to exceed 5 years.

6. The criminal complaint alleges that, on April 27, 2019, Milwaukee Police Officers responded to Saint Joseph's Hospital, XXXX W. Burleigh St. Milwaukee, WI, regarding a person who arrived at the hospital with a gunshot wound to the back. Officers spoke with the victim, identified as "VT," who stated that he was seated inside a vehicle at his mother's residence, XXXX N. 52nd St. Milwaukee, WI. While seated in the vehicle, VT observed Hayes along with his (VT's) ex-girlfriend, identified as "MB," approach the vehicle. Hayes was armed with a black semi-automatic handgun and MB was armed with a golf club. Hayes reportedly yelled at VT to exit the vehicle to which he attempted to drive away. VT reported hearing 4-5 gunshots and shortly after realized that he had received a gunshot wound to his back. Officers

reviewed "Ring Doorbell" video recovered from the area of the shooting, which corroborated the victims' statement. Officers recovered fourteen 9mm casings and four flattened bullets from the scene. While conducting a neighborhood canvas, officers observed a bullet hole in the second story of XXXX W. Mill Rd. Milwaukee, WI. The homeowner reported to the officers that he and his three children were home when the shooting occurred and that one of his children was in her bedroom when a bullet entered the home and struck a TV in the bedroom.

7. Following the shooting, the Milwaukee Police Department's Fugitive Apprehension Unit made multiple endeavors to attempt to locate and arrest Hayes at several known family member's homes located in Milwaukee, WI. All efforts were met with negative results.

8. On July 10, 2019, the U.S. Marshals Fugitive Task Force was requested to assist in locating and arresting Hayes. The Milwaukee Police Department reported that they believed that Hayes had fled Wisconsin and may be in Miami, Florida based upon posts made by Hayes to his Facebook.com and Instagram.com pages.

9. On July 12, 2019, Deputy U.S. Marshal (DUSM) Bressers was assigned the fugitive investigation for Hayes.

10. On July 17, 2019, DUSM Bressers conducted an open records search of social media website Facebook.com. DUSM Bressers located a Facebook page under the name Demarcus Hayes with a URL and User ID Number of,

URL: <https://www.facebook.com/lilxhayes>
User ID Number: 100000494492986

DUSM Bressers reported observing several publicly posted photos of a male on this Facebook page. DUSM Bressers compared the Facebook photos to Hayes' Wisconsin Department of

Transportation photo and found them to be the same person. A public posts made by Hayes on his Facebook.com page on July 11, 2019, "FOLLOW ME ON IG @LILMAC_GS9," directed viewers to "follow" him on his Instagram.com page. DUSM Bressers conducted an open records search of Instagram.com utilizing "lilmac_gs9" as a search term and located Hayes Instagram page. DUSM Bressers noted observing the same photos of Hayes that were posted to his Facebook.com page also being posted to Hayes' Instagram.com page. DUSM Bressers identified the URL for Hayes' Instagram.com page as https://www.instagram.com/lilmac_gs9/.

11. On, July 18, 2019, a search warrant for Hayes' Facebook.com account was signed by the Honorable Glenn H. Yamahiro, Milwaukee County Circuit Court Judge for records and content of the account.

12. On July 29, 2019, a search warrant for Hayes' Instagram.com account was signed by the Honorable David Swanson, Milwaukee County Circuit Court Judge for records and content of the account.

13. On August 14, 2019, a collateral lead (request for assistance) was sent to the Western District of Texas (W/TX) based upon information developed that Hayes was believed to have fled to San Antonio, TX. Investigators with the Lone Star Fugitive Task Force in W/TX conducted an investigation into the whereabouts of Hayes.

14. On August 20, 2019, W/TX reported that Hayes had been residing in San Antonio with MB at XXXXXX Huebner Rd. #2407 San Antonio, TX. The managers of the apartment complex identified Hayes from a known picture and identified Hayes as MB's boyfriend. The managers reported that Hayes was no longer residing with MB and moved to New York.

15. Information received from Facebook.com identified a private message conversation between Hayes and screen name "TrapStan SevenFoe." A portion of the conversation occurring from May 5, 2009 from 22:33:17 to 22:35:15 is as follows,

TrapStan SevenFoe: "That wat up"

Demarcus Hayes: "Dude bitch ass really told"

TrapStan SevenFoe: "Smh u still in town or left"

Demarcus Hayes: "I'm in cali"

TrapStan SevenFoe: "Wit tee"

Demarcus Hayes: "Nah we link up next week in New York"

TrapStan SevenFoe: "Aww ok"

16. Information received from Facebook.com identified a private message conversation between Hayes and screen name "Briggs Alexis." On May 14, 2019 at 14:08:01 Hayes posted,

"Cuzin im literally on the run for attempted murder and this bitch took all da money n left me in madison g this hotel finna make me checkout at 11 and ian got not car or no cheese ima literally be outside cuz can u please look out for me I'll pay u back g"

17. On September 30, 2019, a collateral lead was sent to the U.S. Marshals New York/New Jersey Regional Fugitive Task Force (NY/NJRFTF) requesting assistance in locating and arresting Hayes. As of November 22, 2019, NY/NJRFTF Investigators have been unable to locate and arrest Hayes.

18. Hayes regularly poses publicly on his Facebook and Instagram pages.

19. Hayes last posted on Facebook on November 19, 2019 at 9:14 a.m. Accordingly, I believe that Hayes continues to use his Facebook account while attempting to avoid prosecution in Wisconsin state court.

20. Hayes was last active on Instagram on November 21, 2019. Accordingly, I believe that Hayes continues to use his Instagram account while attempting to avoid prosecution in Wisconsin state court.

21. Since April 27, 2019, Hayes has avoided apprehension and remains at large, despite the Milwaukee Police Department's Fugitive Apprehension Unit and United States Marshals Service's Fugitive Task Force's attempts to locate and arrest him.

22. On November 21, 2019, a criminal complaint and arrest warrant were issued by the Honorable Magistrate Judge Nancy Joseph charging Hayes with a single count of Unlawful Flight to Avoid Prosecution in violation of Title 18, United States Code, Section 1073.

23. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

24. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

25. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

26. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

27. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user

and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

28. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

29. Facebook users can exchange private messages on Facebook with other users. Those messages are stored by Facebook unless deleted by the user. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a chat feature that allows users to send and receive instant messages through Facebook Messenger. These chat communications are stored in the chat history for the account. Facebook also has Video and Voice Calling features, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

30. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.

31. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (i.e., non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

32. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

33. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as "liking" a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user's Facebook page.

34. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

35. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications ("apps") on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

36. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

37. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may

communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

38. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location

in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

39. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

40. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

41. Based on the forgoing, I request that the Court issue the proposed search warrant.

42. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant. The government will execute this warrant by serving it on Facebook. Because the warrant will be served on Facebook, who will then

compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

43. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

44. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with the Facebook URL and user ID:

URL: <https://www.facebook.com/lilxhayes>

User ID Number: 100000494492986

that is stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook, Inc.

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), regardless of whether such information is located within or outside of the United States, including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including for user IDs:

URL: <https://www.facebook.com/lilxhayes>
User ID Number: 100000494492986

full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.

- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities **July 18, 2019 to the date of this order**;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them **July 18, 2019 to the date of this order**, including Exchangeable Image File ("EXIF") data and any other metadata associated with those photos and videos;
- (d) All profile information; News Feed information; status updates; videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which

the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications;

- (e) All records or other information regarding the devices and internet browsers associated with, or used in connection with, that user ID, including the hardware model, operating system version, unique device identifiers, mobile network information, and user agent string;
- (f) All other records and contents of communications and messages made or received by the user **July 18, 2019 to the date of this order** including all Messenger activity, private messages, chat history, video and voice calling history, and pending "Friend" requests;
- (g) All "check ins" and other location information;
- (h) All IP logs, including all records of the IP addresses that logged into the account;
- (i) All records of the account's usage of the "Like" feature, including all Facebook posts and all non-Facebook webpages and content that the user has "liked";
- (j) All information about the Facebook pages that the account is or was a "fan" of;
- (k) All past and present lists of friends created by the account;
- (l) All records of Facebook searches performed by the account **July 18, 2019 to the date of this order**;
- (m) All information about the user's access and use of Facebook Marketplace;
- (n) The types of service utilized by the user;

- (o) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (p) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (q) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

Facebook is hereby ordered to disclose the above-information to the government no later than 14 days of the issuance of this warrant.

II. Information to be seized by the government

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. Section 1073 involving Demarcus Hayes, including, for each user ID identified on Attachment A, information pertaining to the following matters:

- (a) The whereabouts, movement, schedule, and location pertinent to fugitive status;
- (b) Any alias;
- (c) Evidence indicating how and when the Facebook account was accessed or used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Facebook account owner;
- (d) Evidence indicating the Facebook account owner's state of mind as it relates to the crime under investigation;

- (e) The identity of the person(s) who created or used the user ID, including records that help reveal the whereabouts of such person(s).
- (f) The identity of the person(s) who communicated with the user ID about matters relating to Hayes' location, including records that help reveal their whereabouts.

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC RECORDS PURSUANT TO
FEDERAL RULES OF EVIDENCE 902(11) AND 902(13)**

I, _____, attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by Facebook, and my title is _____.

I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of Facebook. The attached records consist of _____

[GENERALLY DESCRIBE RECORDS (pages/CDs/megabytes)]. I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of Facebook, and they were made by Facebook as a regular practice; and

b. such records were generated by Facebook's electronic process or system that produces an accurate result, to wit:

1. the records were copied from electronic device(s), storage medium(s), or file(s) in the custody of Facebook in a manner to ensure that they are true duplicates of the original records; and

2. the process or system is regularly verified by Facebook, and at all times pertinent to the records certified here the process and system functioned properly and normally.

I further state that this certification is intended to satisfy Rules 902(11) and 902(13) of the Federal Rules of Evidence.

Date

Signature